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10/797,354

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Stefan Moll

BBMG-100US

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RATNERPRESTIA
P.O. BOX 980
VALLEY FORGE, PA 19482

EXAMINER

LE, LINH GIANG

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/797,354
Filing Date: March 10, 2004
Appellant(s): MOLL et al.

Glenn M. Massina
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03 April 2009 appealing from the Office
action mailed 05 October 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6284131	HOGARD	9-2001
6269340	FORD	7-2001
5339821	FUJIMOTO	8-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hogard (6,284,131) in view of Ford (6,269,340) in further view of Fujimoto (5,339,821).

3. As per claim 1, Hogard teaches a dialysis station implementing a course of treatment for a patient as instructed by a medical personnel and executed by a person (Hogard; Abstract), the dialysis station comprising:

at least one patient place having a dialyzer (Hogard; Abstract), a video terminal (Hogard; Fig. 7) and a central server including a data base (Hogard; Col. 12, lines 8-36).

Hogard does not expressly teach:

at least one physician place equipped with a video terminal,

said video terminals of the at least one patient place and the at least one physician place and the server being interlinked with each other and configured such that information on the course of the treatment at a selected patient place is callable and instructions for a selected patient place are adapted to be input.

However this is well known in the art as evidenced by Ford and Fujimoto. In particular Ford teaches a storage medium containing a drug library with each pump being associated with a set of associated drug delivery information (Ford; Col. 4, lines 52-67). It would have been obvious to add this feature to Hogard with the motivation of having an electronically customizable drug library which allowing for the dissemination, training and execution of customary drug infusion practices in critical areas of the hospital (Ford; Col. 2, lines 55-65). Fujimoto teaches a home medical system including a medical institution side communication apparatus or link and a telecommunication line (Fujimoto; Col. 2, line 40-50). Thus, the claimed invention is merely a combination of

old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Hogard also does not expressly teach an ID input device inputting an identification and wherein the system is configured such that information on the execution of an instruction can be input at the patient place and the execution of an instruction is acknowledged by the executing person acknowledging his or her identity at the ID input device. However, this is well known in the art as evidenced by Ford. In particular, Ford teaches a computer interface program is only accessible by persons who have been assigned a password (Ford; Col. 18, lines 60-68). It would have been obvious to add this feature to Hogard with the motivation of preventing unauthorized use and to prevent loading of unapproved configurations (Ford; Col. 18, lines 60-65).

4. As per claim 2, Hogard does not expressly teach information on occurrences can be input at the patient place, and an acknowledgment of the input is affected in that the executing person acknowledges his or her identity in the ID input device. However, this is well known in the art as evidenced by Ford. In particular, Ford teaches a computer interface program is only accessible by persons who have been assigned a password (Ford; Col. 18, lines 60-68). It would have been obvious to add this feature to Hogard

with the motivation of preventing unauthorized use and to prevent loading of unapproved configurations (Ford; Col. 18, lines 60-65).

5. As per claim 3, Hogard does not expressly teach wherein a patient code can be input which allocates the patient place to a patient. However, this is well known in the art as evidenced by Ford. In particular, Ford teaches a computer interface program is only accessible by persons who have been assigned a password (Ford; Col. 18, lines 60-68). It would have been obvious to add this feature to Hogard with the motivation of preventing unauthorized use and to prevent loading of unapproved configurations (Ford; Col. 18, lines 60-65).

6. As per claim 4, Hogard teaches wherein the video terminal of the patient place is configured as a user interface for setting and changing parameters of the dialyzer (Hogard; Col. 8, line 60 to Col. 9, line 10). Hogard does not expressly teach the setting and change are stored along with the identity of the executing person. However, this is well known in the art as evidenced by Ford. In particular, Ford teaches a computer interface program is only accessible by persons who have been assigned a password (Ford; Col. 18, lines 60-68). It would have been obvious to add this feature to Hogard with the motivation of preventing unauthorized use and to prevent loading of unapproved configurations (Ford; Col. 18, lines 60-65).

7. As per claims 5 and 6, Hogard does not expressly teach:

wherein the video terminals of the at least one patient places and the physician place are connected in an internal communication network;

wherein the internal communication network is connected with an external communication network to which a video terminal of an external physician place is connected.

However, this is well known in the art as evidenced by Fujimoto. In particular, Fujimoto teaches a home medical system including a medical institution side communication apparatus or link and a telecommunication line (Fujimoto; Col. 2, line 40-50). It would have been obvious to add these features to Hogard with the motivation of having a home medical system that can undergo a check or inquiry a medical specialist at a medical institution (Fujimoto; Col. 1, line 65 to Col. 2, line 5).

8. As per claim 7, Hogard does not expressly teach wherein a symbol for calling an instruction input at the physician place can be illustrated on the video terminal of the at least one patient place. However, this is well known in the art as evidenced by Fujimoto. In particular, Fujimoto teaches a home medical system including a medical institution side communication apparatus or link and a telecommunication line (Fujimoto; Col. 2, line 40-50). It would have been obvious to add these features to Hogard with the

motivation of having a home medical system that can undergo a check or inquiry a medical specialist at a medical institution (Fujimoto; Col. 1, line 65 to Col. 2, line 5).

9. As per claim 8, Hogard teaches wherein a patient data file stored in the server includes indications on the dialyzer determined for a patient as well as on the settings and operational parameters thereof, and the video terminal of the at least one patient place receives the settings and operational parameters from the server and sets them at the dialyzer (Hogard; Col. 11, lines 14-45; Col. 12, lines 8-64).

10. As per claim 9, Hogard teaches wherein the input device consists of a data reader reading information on the patient the operator, or both from a data carrier (Hogard; Col. 11, lines 14-45; Col. 12, lines 8-64).

11. As per claim 10, Hogard teaches wherein each video terminal comprises a screen with a keyboard and a computer connected with a control portion of the dialyzer (Hogard; Col. 11, lines 14-45; Col. 12, lines 8-64).

12. Claims 11-20 repeat limitations recited in claims 1-10 and the reasons for rejection are incorporated herein.

(10) Response to Argument

The following arguments will be addressed:

(A) Claims 1-20 are not obvious and unpatentable under 35 USC 103(a) based on Hogard (6,284,131) in view of Ford (6,269,340) in further view of Fujimoto (5,339,821).

Appellant argues on pg. 12 of the 03 April 2009 Appeal Brief that claims 1-20 are not obvious and unpatentable under 35 USC 103(a) based on Hogard in view of Ford in further view of Fujimoto. Appellant argues that the combined references fail to teach the following features of claim 1:

1) video terminals and a server configured such that information on the course of treatment at a selected patient place is callable and instructions for a selected patient place are adapted to be input

2) a system configured wherein the execution of an instruction is acknowledged by the executing person acknowledging his or her identity at the ID input device.

As per the feature of having video terminals and a server configured such that information on the course of treatment is callable, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of

references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Examiner is applying both the Fujimoto and Ford references to teach this limitation. Fujimoto teaches a home medical system including a medical institution side communication apparatus or link and a telecommunication line (Fujimoto; Col. 2, line 40-50). This reads upon having video terminals and the server interlinked with one another. Ford teaches a storage medium containing a drug library with each pump being associated with a set of associated drug delivery information (Ford; Col. 4, lines 52-67). This reads upon information on the course of treatment that is callable. Thus Examiner is basing the rejection of this claim limitation on the *combination* of the aforementioned references. It is improper to attack the Ford and Fujimoto references individually when the rejection is based on the combination of references.

Furthermore the *type* of information being called up is non-functional descriptive material in that there is no functional interrelationship between the data being called up from the patient place and the actual computing processes being performed. Thus the descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. Also, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The patient place in Fujimoto is capable of being *configured* such that information on the course of

treatment at a selected patient place is callable. The “configured” language in the claim is not a positively recited limitation. Therefore, the video terminal taught by Fujimoto is capable of being *configured* to call up information.

Appellant next argues on pg. 15 of the 4/3/09 Appeal Brief that the cited references do not teach or suggest a system configured wherein the execution of an instruction is acknowledged by the executing person acknowledging his or her identity at the ID input device. Again the “configured” language makes any prior art structure capable of being configured such that information on the execution of an instruction *can* be input reads upon the claimed limitation. Ford thus teaches a computer interface program that is capable of being configured to have information on the execution of an instruction that *can* be input.

Appellant further goes on pgs. 15-16 of the Appeal Brief to discuss this feature as described in the specification. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Ford does teach a person being able to modify a file after it has been previously loaded and must again enter ID to be authorized (Ford; Col. 20, lines 8-20). This reads upon execution of an instruction acknowledged by executing person acknowledging his or her identity at the ID input device. By modifying the file after it has already been entered and needing to be re-authorized, the prior art reads on acknowledging an identity at the device.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/M. L./
Examiner, Art Unit 3686
June 19, 2009

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3686

Conferees:

Gerald J. O'Connor /GJOC/
Supervisory Patent Examiner
Group Art Unit 3686

Vincent Millin /vm/
Appeals Practice Specialist
Technology Center 3600

Application: 10/797,354

Paper No. 20090619

Art Unit: 3686

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RatnerPrestesia

P.O. BOX 980

Valley Forge, PA 19482-0980

(610) 407-0700